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THE HAGUE FOR CWC DEL

E.O. 12958: N/A

TAGS: [KTIA](#) [PARM](#) [PREL](#) [CWC](#) [CBW](#) [OPCW](#) [KU](#)  
SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): FINALIZED  
HOST COUNTRY AGREEMENT WITH KUWAIT ON CHALLENGE INSPECTIONS

¶1. Action Request in Paragraph 7.

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OBJECTIVES  
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¶2. Department requests Embassy to pursue the following objective:

-- Deliver to the Government of Kuwait the finalized copy of a Host Country Agreement (HCA) on the conduct of Chemical Weapons Convention (CWC) challenge inspections.

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REPORTING DEADLINE  
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¶3. Embassy should report results of discussions with Kuwaiti officials by NLT September 18, 2009.

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POINT OF CONTACT  
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¶4. Please contact ISN/CB Eugene Klimson at (202) 647-5165 or via email ([klimsone@state.gov](mailto:klimsone@state.gov)) for any further background needed to meet our objective.

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BACKGROUND  
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¶5. The United States and Kuwait has finalized the negotiation of a Host Country Agreement (HCA) on the conduct of Chemical Weapons Convention (CWC) challenge inspections.

¶6. The U.S. Executive Director of the National Authority has signed the letter acknowledging the final text and will forward the final signed copy by mail to Embassy for delivery to the Kuwaiti National Authority. As a courtesy, the United States reprinted the final text at the end of the cable.

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ACTION REQUEST  
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¶7. Drawing on the background and talking points, Embassy Kuwait is requested to deliver the text of the talking points in Paragraph 8 and the letter (with the HCA) in paragraph 9 to the appropriate Kuwaiti officials and report to Washington when the letter has been delivered.

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TALKING POINTS  
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**18. Talking points for delivery:**

- The United States Government is very pleased that we have been able to complete negotiations on a Chemical Weapons Convention (CWC) Host Country Agreement with the Government of Kuwait.
- The United States is pleased to inform you that we can accept the final changes and we are ready to exchange diplomatic letters.
- We believe that this agreement strengthens the commitment of our Governments to the CWC and nonproliferation of chemical weapons.
- The Host Country Agreement will contribute to ensuring that logistics and communications will be conducted in a manner that supports the implementation of a challenge inspection.
- We appreciate Kuwait's constructive approach, efforts, and cooperation during the negotiations.
- We look forward to continuing our cooperation with Kuwait on the CWC and chemical weapon non-proliferation matters.

End of Talking Points.

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**TEXT OF LETTER**  
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**19. Text for Delivery to Kuwaiti Officials:**

H.E. Mr. Jassar A. Al Jassar  
Chairman  
National Committee Charged with the Implementation of the  
Convention on the Prohibition of Chemical Weapons  
Ministry of Defence  
Housing Department  
First Floor  
Kuwait City, Kuwait

Dear Mr. Jassar

I have the honor to refer to the discussions between the United States and Kuwait concerning challenge inspections under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC).

The United States proposes that a set of arrangements and principles for the conduct of challenge inspections under the Convention apply to the conduct of any challenge inspection in the territory of one Participant in which the assets of the other Participant may be within, or in the vicinity of, the inspection site.

Nothing in these principles should be interpreted as altering in any way any agreements in force between the United States and Kuwait. These principles should be interpreted in a manner that is consistent with the Convention and any agreements entered into between either Participant and the Organization for the Prohibition of Chemical Weapons (OPCW).

In the event there is a conflict between the provisions of the Convention or any agreement between either Participant and the OPCW and this arrangement, the provisions of the Convention or such agreement with the OPCW should take precedence.

The arrangements and principles may be amended in writing by the United States and Kuwait.

If the principles and arrangements set out in the Annex below are acceptable to the Government of Kuwait, I have the honor to suggest that this letter and your reply to that effect will place on record the understanding of the United States and Kuwait in this matter that will come into effect on the

date of your reply and will remain in effect until 90 days after the receipt of notice of termination by either Kuwait or the United States.

Yours sincerely,

Robert Mikulak  
United States Department of State  
Bureau of International Security and Nonproliferation  
U.S. National Authority for the Chemical Weapons Convention  
Washington, D.C. 20520

Annex

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND KUWAIT ON PROCEDURES GOVERNING THE CONDUCT OF CHALLENGE INSPECTIONS UNDER THE CHEMICAL WEAPONS CONVENTION (CWC)

Memorandum of Understanding Between the Government of the United States of America and the Government of the State of Kuwait Concerning Cooperation on the Conduct of Challenge Inspections Pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.

The Government of the United States of America and the Government of the State of Kuwait, hereinafter referred to as the &Parties,<sup>8</sup>

Recognizing that the provisions of this Memorandum of Understanding do not infringe upon the sovereignty or independence of either state,

Referring to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction,

Have agreed on the following arrangements and principles to guide the conduct of challenge inspections, which take place on the territory of either of their states.

Article I

For the purposes of this Memorandum of Understanding the terms mentioned below have the following meanings:

11. &The Convention<sup>8</sup> means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13th, 1993.

12. &OPCW<sup>8</sup> means the Organization for the Prohibition of Chemical Weapons.

13. &Assets<sup>8</sup> means any equipment, area, building or location owned, operated, occupied by, or under the control of one of the Parties.

14. &Inspectable area<sup>8</sup> means the area that is eligible for inspection, and that lies within the requested or final perimeter or in the vicinity of the requested final perimeter.

15. &Vessels and Aircraft<sup>8</sup> means sovereign vessels and aircraft (including warships as defined under customary international law as reflected in Article 29 of the 1982 United Nations Convention on the Law of the Sea, and other ships owned or operated by a state and used only for government noncommercial service) and state aircraft (as referred to in the Convention on International Civil Aviation of 1944) used only for government noncommercial service.

Article II

11. These arrangements and principles shall apply to the conduct of any challenge inspection which takes place on a site in the territory of the State of Kuwait (hereinafter referred to as &Kuwait<sup>8</sup>) in which or near to which any

assets owned or operated by the United States of America (hereinafter referred to as the &United States8) are located.

¶12. These arrangements and principles shall also apply, mutatis mutandis, to any challenge inspection which takes place on a site in the territory of the United States, in which or near to which any assets owned or operated by Kuwait are located. In this event, &Kuwait8 shall take the place of the &United States8 and the &United States8 shall take the place of &Kuwait8 wherever these expressions occur in the articles of this Memorandum of Understanding.

### Article III

¶11. If either Party receives notice from the OPCW of a challenge inspection that is to be conducted on the territory of Kuwait in which assets owned or operated by the United States are located, it shall notify the other Party within two hours. Such notification shall include all of the information provided by the OPCW concerning the inspection. The other Party shall acknowledge receipt within two hours. The acknowledgement of receipt shall confirm receipt of the information provided in the notification, as well as provide the name and telephone number of any alternative points of contact for future transmission of any additional information. Any further information about the inspection that becomes available after the initial notification shall also be transmitted to the other Party within two hours after its receipt.

¶12. In the event that the Party which received notice of the inspection from the OPCW does not receive an acknowledgment of receipt from the other Party within the two-hour time period, the Party which received notice of the inspection from the OPCW shall proceed with preparations for the challenge inspection under the Convention, until the other Party provides such acknowledgment.

¶13. The point of contact for notifications to the State of Kuwait is the National Committee Charged with the Implementation of the Convention on the Prohibition of Chemical Weapons, 965-2-483-3351, 965-2-677-7098 and 965-2-564-1259; fax 965-2-483-6444 and 965-2-562-2789.

¶14. The point of contact for notifications to the United States is the United States Nuclear Risk Reduction Center, 001 -202-647-9166, fax 202-647-4892 and the United States Central Command Joint Operations Center, 001-813-827-3928 and fax 001-813-827-6175.

### Article IV

The Parties shall consult one another regarding whether to accept an observer designated by the requesting State Party to the Convention.

### Article V

For challenge inspections where the United States is the inspected State Party, Kuwait shall seek to provide the necessary support to the United States. It shall facilitate the inspection, in order to enable the inspection team to carry out its tasks in an effective and timely manner as set forth in Section C (Paragraph 19) of Part II of the Verification Annex to the Convention.

### Article VI

In the event that the Party, which is not the inspected State Party, has assets within the inspectable area, that Party may send representatives to observe and participate in preinspection and inspection activities, and to prepare its assets for inspection.

### Article VII

¶11. Both Parties affirm that each retains its full sovereign

rights with regard to its vessels and aircraft.

¶12. If one of the Parties is designated as the inspected State Party in a challenge inspection, and the inspectable area is restricted to a vessel or aircraft owned or operated by the other Party, then both Parties shall notify the OPCW that this vessel or aircraft is solely under the jurisdiction and control of the other Party, and that the governments of both Parties consider the other Party to be the inspected State Party.

¶13. If one of the Parties is designated as the inspected State Party, and both Parties accept that the other Party should be the inspected State Party, then both Parties shall consult concerning the possibility of informing the Director-General and the Executive Council of the OPCW to seek a change in designation.

#### Article VIII

If an asset owned or operated by the other Party lies within the inspectable area, including the 50-meter band, the inspected State Party shall consult the other Party regarding the final requested perimeter of the inspectable area. In addition, the inspected State Party shall obtain the consent of the other Party before:

- (i) Proposing an alternative perimeter that would include an asset owned or operated by the other Party within the inspectable area that would not have been included under the requested perimeter in the original inspection request, or
- (ii) Accepting a final perimeter that would place an asset owned or operated by the other Party within the 50-meter band.

#### Article IX

¶11. Each Party shall seek to fulfill its obligations under the Convention.

¶12. Both Parties shall coordinate regarding contacts with the inspection team. Neither Party shall disclose information concerning assets owned or operated by the other Party, without first obtaining the consent of the other Party.

¶13. The representatives of the inspected State Party shall not refer to, nor provide, information on assets belonging to the other Party outside the inspectable area without the consent of the other Party.

#### Article X

¶11. Whenever one or more assets of the United States would be included, fully or partially, within the inspectable area and Kuwait is the inspected State Party, Kuwait shall permit the United States to implement the provisions specified in Section C of Part X of the Verification Annex to the Convention with respect to its assets, and shall permit U.S. representatives to accompany the inspection team.

¶12. Whenever one or more assets of Kuwait would be included, fully or partially, within the inspectable area and the United States is the inspected State Party, the United States shall permit Kuwait to implement the provisions specified in Section C of Part X of the Verification Annex to the Convention with respect to its assets, and shall permit Kuwaiti representatives to accompany the inspection team.

#### Article XI

¶11. In order to facilitate inspection activities, the United States shall send experts from Washington, D.C., and their necessary equipment, which may include a mobile laboratory. The mobile laboratory will be of assistance in taking samples and analysis.

¶2. Both Parties shall also consult with one another periodically regarding personnel, equipment and material requirements for hosting or participating in inspections and they shall provide appropriate guidance to one another for domestic laws, regulations, restrictions or necessary entry requirements.

#### Article XII

Whenever the Host Country is not the inspected State Party, the inspected State Party shall permit representatives of the Host Country to accompany the inspection team.

#### Article XIII

¶1. This Memorandum of Understanding shall be interpreted consistently with the Convention, any agreements in place between the Parties, and any agreements entered into between either Party and the OPCW.

¶2. In the event of a conflict between the terms of this Memorandum of Understanding and the Convention, the provisions of the Convention shall take precedence.

#### Article XIV

The Parties may conduct joint challenge inspection exercises in accordance with this Memorandum of Understanding.

#### Article XV

¶1. This Memorandum of Understanding shall enter into force on the date it is signed.

¶2. This Memorandum of Understanding may be amended by written agreement of the two Parties.

¶3. This Memorandum shall remain in force unless terminated by either Party after giving 180-days written notice to the other Party.

Signed in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2009 in duplicate in English and Arabic languages, both texts being equally authentic.

End of text for delivery to Government of Kuwait.

CLINTON